II.

Jurisdictional statement.

1. The jurisdiction of this court is based upon Section 237B of the Judicial Code as amended by the Act of January 13, 1925; Volume 8, Fed. Code Annotated (FCA), Title 28. Judicial Code, Section 344b.

The series of proceedings which give rise to the existence of Federal jurisdiction, and hence this court's right to review this record is determined from the following circumstances:

Section 17, of the Wills Act of Illinois as then in effect, (Chap. 148, par. 19, Sec. 17, Illinois Revised Statutes 1939) read as follows:

> "19. *Manner of Revoking Will.* § 17. No will, testament or codicil shall be revoked, otherwise than by burning, canceling, tearing or obliterating the same, by the testator himself, or in his presence, by his direction and consent, or by some other will, testament or codicil in writing, declaring the same, signed by the testator or testatrix, in the presence of two or more witnesses, and by them attested in his or her presence; and no words spoken shall revoke or annul any will, testament or codicil in writing, executed as aforesaid, in due form of law."

This petitioner has never contended that the original will was destroyed in the presence of the testatrix. He has, however, contended and still contends that the testimony offered by the respondent clearly shows that this will was destroyed by "tearing", pursuant to the written direction by the testatrix to her lawyer as set out in her letter of June 1914, which letter was written *animo revocandi* and

that this act of destruction was fully ratified and approved by the testatrix as and for her act of revocation.

The testimony further shows that fifteen years thereafter, on August 1, 1929, Mrs. Mitchell, the testatrix called on the same lawyer at the same office where the destruction of the will had previously taken place, and among other things, the testatrix and her lawyer discussed the earlier destruction of this will. Her lawyer then handed her the original letter and envelope which he had theretofore mailed to her and which had been returned to him by the postal department. In this letter he informed her of his compliance with her request to destroy the will. Whatever defect had existed in the legal effect of the prior destruction of the will, nullifying its earlier attempted revocation, such defect was fully cured and the revocation was as complete on that day, August 1, 1929, as if the will had then been torn by her lawyer at her direction and in her presence. As more than six years had elapsed between the above date and the date of the death of the testatrix, and the will was neither republished nor restored by her, the contention of petitioner that this amounts to an adoption, confirmation and ratification of the destruction of this will represents the very heart of petitioner's appeal; this was strongly urged by him in the Appellate Court and in the Supreme Court of Illinois. An examination of the opinions of the Appellate Court in the present case and in the appeal immediately preceding this one, indicates unequivocally that this contention was neither considered nor passed upon by that Court. A full and complete adjudication of these substantial contentions, properly raised by Petitioner, is a right which the courts of Illinois should not have denied to this petitioner. Such right to a complete adjudication of substantial issues thus raised, is guaranteed to petitioner by the Constitution of Illinois and by the Constitution of the United States of America.

Section 2 of Article II of the Constitution of Illinois provides:

> "No person shall be deprived of life, liberty, or property, without due process of law."

Section 19 of Article II of the Constitution of Illinois provides:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

From these quotations, the Court will observe, that a "certain" remedy and "complete" justice are rights, guaranteed to petitioner in the courts of Illinois; a denial of either or both, constitutes a denial of due process, under the Illinois Constitution.

The denial of the Federal right to due process was likewise raised by petitioner in apt time and was adjudicated against this petitioner by the denial of his aforesaid petitions. The pertinent portion of Section 1 of the 14th Amendment to the Constitution of the United States of America reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Although due process is regulated by State procedure, the failure to accord due process is a Federal question and justifies Federal supervision.

This petitioner, like any other party litigant, has a vested right to a complete adjudication of substantial issues properly raised in a court of review on appeal. This court has

held that the fundamental requisites of due process is the opportunity to be heard. *Grannis* v. *Ordean,* 234 U. S. 385, 394. The Appellate Court of Illinois by its failure to pass upon the controlling question as to the effect of the ratification by the testatrix of the prior destruction of her will, has thereby denied a complete adjudication and due process of law to this petitioner; the Appellate Court thus created the Federal question, and the right to appeal to this court. The breach of petitioners' constitutional rights was immediately called to the attention of the Appellate Court, by a petition for rehearing, which petition was overruled. The same grounds were presented to the Supreme Court of Illinois on petition for leave to appeal; this petition was denied. By these rulings, the Appellate Court for the First District of Illinois became the highest court in the State of Illinois in which a final decision was made, or could be had. The basis of jurisdiction for review of that decision by this court, is therefore complete. This Court recently held that whether the Federal question was adequately presented to the State Court is itself a Federal question. *Lovell* v. *City of Griffin,* 303 U. S. 444.

III.

Questions Presented.

1. Assuming the facts in the record to be as presented by respondent, and they are entirely uncontroverted by this petitioner, we come to the question as to the legal effect of this evidence. Does a statute which provides several methods of destruction for revoking a will, either by the testatrix or by her agent in her presence, preclude its destruction out of the presence of the testatrix, if such destruction is clearly ratified, as was done in this instance?

2. Could the destruction of this will in any manner be adopted, ratified, and approved by the testatrix before her death, so as to amount to its revocation?

3. A period of fifteen years elapsed between the time the testatrix directed her attorney to destroy her will and the time that its actual destruction was personally communicated to her by her said attorney. The testatrix evidenced no objection to its destruction, she neither republished nor restored this will; she died more than six years after that occurrence at her lawyer's office. Should not her intention that her will remain forever revoked so clearly manifested by her, be given legal effect by the courts?

4. In order to permit her property to be administered after her death as an intestate estate, should the testatrix have been required to indulge in the absurdity of making a new will and to then destroy that will, pursuant to the strict provisions of the statute, in order to make good the prior revocation of the will which is now before the Court?

5. Where the Illinois statute permits the destruction of a will by an agent, in the presence of a testatrix, to effect a valid revocation, why should not the same result be accomplished by a written direction from the testatrix to her agent, which direction is actually carried out, and is later clearly ratified and approved by her at a meeting between the testatrix and her agent?

6. The purpose of the statute relating to the manner of revoking wills is clearly intended to prevent fraud and imposition upon testators and their heirs. Where, however, the revocation is complete as it is in this case, and the testatrix was led to believe by her lawyer that her will was destroyed, and her intention that the will be and remain revoked and destroyed is manifest, does it not result in an imposition and an injustice to the testatrix and her legal heirs to permit her disinherited niece to now inherit her property, under this destroyed and clearly revoked will?

7. In reviewing this appeal did the Appellate Court of Illinois have the right to ignore these legal questions, and does not such action of the Court amount to a denial

of a complete adjudication of substantial issues, and therefore a denial of due process of law?

IV.

Reasons relied on for the allowance of the writ of certiorari.

1. The issues raised by this petitioner from the inception of this proceeding are still unadjudicated, and he has not been accorded due process of law.

2. Petitioner has been denied due process of law, as guaranteed by the Illinois and Federal Constitutions.

3. By failing to pass upon or consider the right or effect of testatrix' ratification of the destruction of this will, as urged by petitioner, the Appellate Court of Illinois failed to give effect to well established legal rights and principles.

4. The Appellate Court of Illinois has completely ignored or failed to give effect to the legal principles touching upon the right of the testatrix to ratify the act of her agent in destroying her will, and to the rule of law that such ratification amounts to and has resulted in a revocation of her will. This is the main contention in petitioner's appeal and has been wholly ignored, by the Appellate Court.

WHEREFORE, it is respectfully submitted that this Petition for Certiorari to review the judgment of the Appellate Court for the First District of Illinois should be granted.

EDWARD GUERIN,
Petitioner.

WILLIAM S. KLEINMAN,
Attorney for Petitioner.